

TESTIMONY BEFORE JOINT COMMITTEE ON WAYS & MEANS

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Chairman Murray, Chairman Rogers, members of the Joint Committee, thank you for this opportunity to appear before you on behalf of the Judicial Branch.

Because of the many witnesses you will need to hear from today, my remarks will be brief. I will focus on certain aspects of Fiscal Year 2004 budget requests submitted by the Judicial Branch, and on certain provisions of House 1 as they pertain to the funding and management of the Judicial Branch. Chief Justice Armstrong and Chief Justice Dortch-Okara will provide more details on areas germane to their respective jurisdictions.

Let me preface my remarks by expressing my continued respect and admiration for the thoughtful way in which this Joint Committee, the Legislature, and the Governor have approached the challenges of funding our government in this time of acute fiscal crisis. The Justices well recognize that the Legislative and Executive branches face difficult, indeed heartbreaking, decisions as you craft a blueprint for Fiscal Year 2004 and beyond. I know that I speak on behalf of everyone in the Judicial Branch when I say that we will do everything in our power to manage our courts fairly and efficiently in these most difficult circumstances.

I. Budgetary Issues

A. Trial Court

I will turn first to budgetary matters. The Supreme Judicial Court, the Appeals Court, and the Trial Court have submitted modest budget requests for FY2004. The Justices instructed Chief Justice Armstrong and Chief Justice Dortch-Okara to submit budgets containing only the most essential financial requirements for Fiscal Year 2004, and I believe that they have done so. Turning first to the Trial Court, the Justices firmly endorse Chief Justice Dortch-Okara's recommendation of \$481,401,974 for FY 2004, which she will discuss with you in greater detail. Let me underscore that this is a bare-bones budget request, intended principally to staunch the hemorrhaging of services in our court system.

The Trial Court's Fiscal Year 2004 budget request absorbs nearly the full brunt of the loss of approximately 1,200 employees, or 12% of the workforce, that has occurred over the past eighteen months due to budget cuts over the past two fiscal years. As a result of these dramatic staffing reductions, the workload and overtime demands on many of the dedicated men and women still working in our Trial Courts are fast approaching the unbearable. I would add that the impact has been disparate, weighing more heavily on some courts than others.

Chief Justice Dortch-Okara has made a modest, reasonable request to backfill eighty positions in courthouses where the shortage of staff has most severely crippled the Trial Court's ability to serve the public. In the coming fiscal year, she plans to deploy staff throughout the Trial Court based on an analysis of core functions and a staffing model being developed with the assistance of a team of internal advisors and the National Center for State Courts. The Justices strongly endorse the development and use of such a model for deploying resources in an even-handed manner throughout the Trial Court.

House 1 does not provide the Trial Court with even the bare-bones appropriation Chief Justice Dortch-Okara has requested. Again, she will explain the hard consequences of the Governor's proposed allocation. I, however, feel compelled to call your attention to one feature of House 1 that warrants this Joint Committee's particular scrutiny, and, I respectfully suggest, its ultimate rejection. House 1 envisions partially funding the Trial Court's central administrative account through what is termed the recapture of "retained revenue." In other words, the Trial Court would be funded, in substantial part, by the collection of court fees imposed by judges. The Governor's bill assumes that \$45 million in retained revenue can be "captured" in this fashion for use by the Trial Court. Chief Justice Dortch-Okara has serious reservations about that number, as she will explain in her testimony. But the Justices, Chief Justice Dortch-Okara, and the Chief Justices of the Trial Court Departments have other concerns about the reliance on such "revenue" to fund core and critical functions of the courts. Judges do have an obligation to

impose fines and fees as provided by statute, and we commend Chief Justice Dortch-Okara for working with the Trial Chiefs to ensure that judges are acting in accordance with their statutory obligations. That said, it would be a source of great concern if there could be an appearance that financial ramifications on the courts' central account played a role in judges' sentencing determinations. The public deserves to know that judges are carrying out their statutory duties to order appropriate remedies free of concerns outside the courtroom. We respectfully advise that you reject House 1's provision to fund such a significant portion of the Trial Court's administrative account from revenue retained in the manner proposed by the Governor.

B. Supreme Judicial Court

I will comment later on some other aspects of House 1 that affect the Trial Court, but I turn now to discuss the Supreme Judicial Court. The Court has submitted a maintenance budget for the salaries of the seven Justices, staffing and general administration, the Suffolk County Clerk's Office, and the Appellate Court Information Technology Project. Even though staffing levels at the SJC have remained virtually unchanged for ten years, the Justices have eliminated the need for an expansion request by leaving two positions vacant in the court in order to fund a critically-needed position in the Office of the Reporter of Decisions. The addition of an Assistant Reporter of Decisions will help to ensure the timely release of appellate decisions to the public, even as the volume of appellate decisions has grown substantially due to the Appeals Court's expansion. While this will avert a looming crisis in the Reporter's Office, I emphasize that the Reporter's Office remains understaffed.

The Justices will also press ahead with the Appellate Court Technology Project, with no request for added funds. The Supreme Judicial Court and the Appeals Court have never been included in the bond authorization supporting the Trial Court's information technology program, now called *MassCourts*. We continue, however, to be actively committed to the appellate courts' technology project, which will allow us to develop fully an e-filing system and to streamline case

management and the flow of information to litigants and the public.

In these difficult times, we are trying very hard to maintain our services to the public by carefully managing our resources. I would be pleased to provide any additional information regarding the Supreme Judicial Court's budget that would be helpful to the Committee.

C. Appeals Court

The recent addition of eleven new Justices to the Appeals Court was designed to address, and has addressed, the chronic shortage of Justices and the intolerably burgeoning back log of cases in that court. In a little more than a year, Chief Justice Armstrong and the Justices of his court have done a masterful job reducing the backlog of pending cases, and for that they deserve great commendation. But appellate judges do not, and cannot, work in isolation. The aim of expediting appellate justice requires a small addition in the Appeals Court's budget to fund staff and office equipment to support the Justices' work. You will hear more about this from Chief Justice Armstrong.

II. Management Issues

Before I ask Chief Justice Armstrong to address the Appeals Court's needs in more detail, I want to comment on several items contained in House 1 which are not budgetary in the strict sense of that word. House 1 contains inventive proposals to change the management and structure of our courts. Before commenting on a few of these, I will tell you that the Justices wholeheartedly welcome Governor Romney's interest, and the on-going attention of the Legislature, to the constitutional and statutory obligations of the three Branches to see that justice is delivered. We look forward to working closely with the leaders of both the Executive and Legislative Branches as we all strive to improve the ways our courts serve the people.

Chief Justice Dortch-Okara will elaborate on many of the Governor's proposals for managing the courts. The Justices asked me to offer our views on some of the initiatives put

forward by the Governor.

House 1 consolidates the Board of Bar Examiners and the Commission on Judicial Conduct, and funds them both solely from increased bar application fees. The Justices do not support this proposal. The Board of Bar Examiners is a gatekeeper; its sole task is to regulate the admission of lawyers to practice in Massachusetts. It is not a disciplinary body; it has nothing to do with judges. In contrast, the Commission on Judicial Conduct is a disciplinary body; it investigates and, where appropriate, administratively prosecutes claims of judicial misconduct. These are, and should be, entirely separate entities, with entirely separate missions. Judicial accountability is of preeminent importance to maintaining the people's faith in the integrity of the Judicial Branch. The Commission on Judicial Conduct is a modern, legislatively created, body that plays a key role in keeping judges accountable, and has been recognized nationally for that role. Its ability to do so, thoroughly and completely, must be guaranteed. The Commission on Judicial Conduct must have the resources to respond appropriately to claims of judicial wrongdoing. It cannot depend for its budget on the number of people who happen to apply to practice law in the Commonwealth in any given year. The Justices respectfully recommend that the Commission on Judicial Conduct be funded independently of bar fees, in a specific and adequate dollar amount.

Another major initiative proposed by House 1 is what is referred to as the consolidation of various District Courts. The Governor's plan calls for eliminating some courts, closing some court buildings, and terminating some employees. From the earliest days of our Commonwealth, local courts have served the crucial function of making justice accessible to local communities. Our community courts frequently have acted as proving grounds for significant innovations in civil and criminal justice. The Justices, however, recognize that, with so many pressing demands on such a diminished treasury, shuttering some local courthouses, or consolidating one or more courts in a single building, if done in a principled way, may be in the public's best interest.

The Justices express our strong support for applying a consistent, principled analysis when determining whether and which courts to close. Such an analysis would of necessity recognize that questions of staffing and case flow are certainly part of the equation that must be considered, as the Governor has recommended. But there are other important questions as well. Can people in a community whose courthouse is closed get to the next nearest courthouse by public transportation? If a courthouse is closed, is an adjacent or nearby courthouse able to absorb the increased caseload? How difficult will it be for attorneys or law enforcement officers and other witnesses to travel to that courthouse? In our view, if courthouses are to be closed or consolidated, the burden must fall on those communities best able to bear those burdens, as determined by the Legislature, in consultation with Chief Justice Dortch-Okara and the affected Trial Chiefs, after such a principled analysis.

House 1 also proposes to merge a Department comprised of one court, the Boston Municipal Court, into the Department comprised of all of the other courts of like jurisdiction in the remainder of the Commonwealth, namely the District Court Department. Here, too, the Justices well recognize the need to consider all possible economies in light of the pressing demands on a diminished treasury. And, as with the closing of District Courts, the Justices are committed both to realizing economic efficiencies and to ensuring that our court structure enables us to provide the best service to the people who use our courts. The merger of the Boston Municipal Court Department is one administrative reform that has been proposed repeatedly by thoughtful observers who have looked at the structure of our trial courts.

For generations, the judges, clerks, and staff of the Boston Municipal Court have done a tremendous job of meeting the needs of a diverse, fast-paced, urban population, and the BMC has been, and continues to be, a community court of exceptional stature. The constitutional authority to create, dissolve, or merge courts rests with the legislative branch, as the constitutional authority to appoint Justices to such courts rests with the Governor. If it is the considered view

of this body that merging the Boston Municipal Court Department into the District Court Department would accomplish the objectives noted above, the Justices would offer their full support.

Another provision of House 1 is the proposal to change the structure and funding of legal services for the poor and the mentally ill. The Justices emphasize that access to justice is a basic right. It cannot be sacrificed. It cannot be compromised. In this, as in other areas, we welcome thoughtful consideration of the most effective way to use public monies to accomplish that end. But we have deep reservations about the impact of House 1's proposals on some of our community's most vulnerable populations, and about the increased strain the proposals, if implemented, would place on our courts, which are already struggling to meet the needs of litigants on the civil side who cannot afford to pay for an attorney.

The last initiative in House 1 that I will address today concerns the consolidation of line items in the Judicial Branch's overall budget as recommended by the Governor. In the Justices' view, given the extraordinary impact on the courts occasioned by the significant budgetary cuts over the past two years, it is essential that Chief Justice Dortch-Okara have the ability to move scarce resources to where they are most critically needed. If the Judicial Branch is to deliver the best service to the greatest number of people, as we all expect and the public deserves, we need greater fiscal and administrative flexibility. Consolidation of line items is one mechanism to achieve that end. Explicit authorization to transfer funds and personnel among different courts is another. Whatever the mechanism endorsed by this body, broad and clear authority to allocate scarce resources to where they are most necessary is essential in these difficult circumstances.

In conclusion, I want to thank you, Chairman Murray, Chairman Rogers, and members of the Joint Committee, for this opportunity to address the budgetary needs of the Judiciary and to share the Justices' views on certain proposals contained in House 1.